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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,875	05/14/2002	Jay A Fournier	021238-503	8681

21839 7590 06/08/2006

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EXAMINER

MAYES, DIONNE WALLS

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/031,875

Applicant(s)

FOURNIER ET AL.

Examiner

Dionne Walls Mayes

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-- The MAILING DATE f this communicati n appears on th cover sheet with th c rrespondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18, 20, 22, 23, 25, 26 and 29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 15, 22, 23, 25 and 29 is/are allowed.
6) ☒ Claim(s) 2-14, 16-18, 20, and 26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Pri rity under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-14, 16-18, 20, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rafton (US. Pat. No. 1,808,068).

Regarding independent claim 2, and claims 3,5-6, 12, 14, 17, 18 and 26, Rafton discloses a paper sheet, and a method for making same, comprised of sulphite/soda pulp fibers (i.e. wood pulp) having an alkaline filler, e.g. calcium carbonate magnesium hydroxide (corresponding to the claimed "ammonium-containing compound filler particles), in an amount of about 14% (see examples), and an inorganic alkali metal salt, e.g. sodium silicate or ammonium. While not specifically articulated as such, the paper of Rafton is capable of being used as a wrapper for a smoking article. A claim containing recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim (see MPEP 2114 – which applies equally to "article" claims). The intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use then it meets the

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claim. See *In re Casey*, 370 F. 2d 576;152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F. 2d 937, 939; 136 USPQ 458, 459 (CCPA 1963). Further, where the claimed and prior art product/apparatus is identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430,433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent. Since the Rafton paper would be capable of being used as a wrapper for a smoking article, it follows that the ammonium-containing filler compound would reduce the aldehyde content in cigarette smoke, since this it is well known/evident that when heated at temperatures reached during smoking, ammonium salts release ammonia gas (in addition to carbon dioxide and water), which then would reduce the level of aldehyde in the cigarette smoke by chemical reaction. (This theory is even clear from Applicant's Table 1 on page 8 of the instant specification). Therefore, it follows that the monoammonium phosphate would contribute to the reduction of the aldehyde content in any smoke generated by its use as a wrapper for cigarettes. (Note: Applicant's recitation in the last line of claims 2, 22 and 26, do not further limit the claims structurally since "the electrical smoking system" is not positively recited in the body of the claims, i.e. the claims are drawn to a wrapper, not an electrical smoking system.)

Regarding claim 4, while Rafton may not specifically state that its alkaline filler is magnesium ammonium phosphate it follows that one having ordinary skill in the art would have selected this compound since Rafton states that its filler can be any

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substantially water insoluble alkaline material compound, and magnesium ammonium phosphate is a well-known compound with these properties.

Regarding claims 7-8, the paper of Rafton would obviously have these porosity and weight parameters.

Regarding claims 9-10, the alkali metal salts disclosed in Rafton are capable of serving as "burn additives" if the paper of Rafton were to be used to wrap a tobacco rod.

Regarding claim 11, while Rafton may not disclose the particular claimed metal salts it follows that one having ordinary skill in the art would have selected one of these salts since they are alkali metal salts that are commonly used/known in many arts.

Regarding claim 13, one having ordinary skill in the art would have arrived at the claimed alkaline filler ranges, after routine experimentation, in order to achieve an optimal filler loading for the paper of Rafton.

Regarding claim 16, it would have been obvious to one having ordinary skill in the art at the time of the invention to have had the claimed mineral phase and any of these phases are common forms of the ammonium compound.

Regarding claim 20, the wrapper of Rafton would obviously be "perforated" - which means that it contains pores/holes - since it is not disclosed as being impermeable to air.

Allowable Subject Matter

3. Claims 15, 22-23, 25 and 29 are allowed.

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

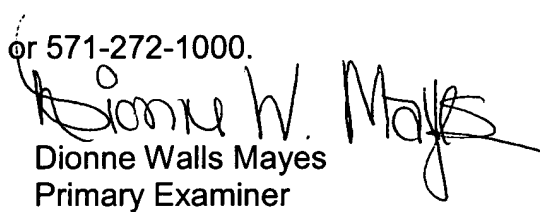
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dionne Walls Mayes
Primary Examiner
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June 6, 2006